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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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Civil No. 07cv1607-L(LSP)

11 ANTHONY C. HALBERT,  
12 Plaintiff,

13 v.

14 COUNTY OF SAN DIEGO, *et al.*,  
15 Defendants.  
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)  
)  
) **ORDER DENYING DEFENDANT**  
) **SAM SAMOA’S MOTION TO**  
) **DISMISS**  
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)

17 In this civil rights action Plaintiff alleges pursuant to 42 U.S.C. § 1983 that his  
18 constitutional rights were violated by several law enforcement officers. Defendant Oceanside  
19 Police Detective Sam Samoa (“Defendant”) filed a motion to dismiss based on the expiration of  
20 the statute of limitations. Plaintiff filed an opposition and Defendant filed a reply.<sup>1</sup> For the  
21 reasons which follow, the motion is **DENIED**.

22 Plaintiff alleged he was injured on August 19, 2005. (Fourth Am. Compl. at 4-5.) The  
23 original complaint was filed August 14, 2007. However, the original complaint did not name  
24 Defendant Samoa by his name, but instead named several Doe defendants. Defendant Samoa  
25 was substituted for Doe 5 and identified by his name for the first time in the fourth amended  
26 complaint filed August 5, 2008. It is undisputed that the applicable statute of limitations is two  
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<sup>1</sup> The reply was not timely filed pursuant to Civil Local Rule 7.1(e)(3).

1 years pursuant to California Code of Civil Procedure Section 335.1. *See Action Apartment Ass'n*  
 2 *Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1026 (2007). It is also undisputed that  
 3 the original complaint was timely filed and that the fourth amended complaint was filed after the  
 4 expiration of the statute of limitations. Defendant argues that the fourth amended complaint  
 5 does not relate back the date of the original complaint and that he should be dismissed pursuant  
 6 to Federal Rule of Civil Procedure 12(b)(6) because all the claims asserted against him are time-  
 7 barred.

8 In the context of amending a complaint to substitute a fictitiously-named defendant,  
 9 “California law, not the Federal Rules of Civil Procedure, governs whether in a section 1983  
 10 action an amended complaint relates back to the filing of the original complaint.” *Ortiz v. City*  
 11 *of Imperial*, 884 F.2d 1312, 1314 (9th Cir. 1989). In this regard, Section 474 of the California  
 12 Code of Civil Procedure provides in pertinent part:

13 When the plaintiff is ignorant of the name of a defendant, he must state that fact in  
 14 the complaint . . . and such defendant may be designated in any pleading or  
 15 proceeding by any name, and when his true name is discovered, the pleading or  
 proceeding must be amended accordingly . . .

16 Provided the requirements of section 474 are satisfied, “the amendment is deemed to relate back  
 17 to the filing date of the original complaint for purposes of the statute of limitations.” *Fireman’s*  
 18 *Fund Ins. Co. v. Sparks Constr., Inc.*, 114 Cal. App. 4th 1135, 1143 (2004) (internal quotation  
 19 marks, brackets and citation omitted). The purpose of section 474 “is to enable a plaintiff to  
 20 commence an action before it has become barred by the statute of limitations due to plaintiff’s  
 21 ignorance of the identity of the defendant. The statute should be liberally construed to  
 22 accomplish that purpose.” *Dieckmann v. Super. Ct. (Int’l Harvester Corp.)*, 175 Cal. App. 3d  
 23 345, 354 (1985). “Nevertheless, [the] requirements, as so construed, are mandatory.” *Fireman’s*  
 24 *Fund*, 114 Cal. App. 4th at 1143-44.

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1 Defendant argues that Plaintiff's original complaint did not comply with the requirements  
2 of section 474 and that the fourth amended complaint therefore does not relate back. In the  
3 original complaint Plaintiff named Doe defendants and alleged:

4 Plaintiffs allege that each of the Defendants named as DOE was in some manner  
5 responsible for the acts and omissions alleged herein, and Plaintiff will ask leave  
6 of this court to amend this Complaint to allege such name and responsibility when  
that information is ascertained.

7 (Compl. at 2.) Defendant argues that Plaintiff did not comply with section 474 because he did  
8 not expressly allege that he was ignorant of the names of the Doe defendants.

9 By means of relating back to the filing of the original complaint, section 474 effectively  
10 extends the statute of limitations as to unknown defendants. *Fireman's Fund*, 114 Cal. App. 4th  
11 at 1143. In this regard, the court can apply section 474 as substantive California law pertaining  
12 to the statute of limitations. *Rumberg v. Weber Aircraft Corp.*, 424 F.Supp. 294, 298 (C.D. Cal.  
13 1976), adopted as the law of the circuit in *Lindley v. Gen Elec. Co.*, 780 F.2d 797, 800 (9th Cir.  
14 1986). However, irrespective of the source of subject matter jurisdiction, in federal court,  
15 procedure is governed by federal law, particularly when an issue is directly covered by the  
16 Federal Rules of Civil Procedure. *Hanna v. Plumer*, 380 U.S. 460 (1965); *Vess v. Ciba-Geigy*  
17 *Corp. USA*, 317 F.3d 1097, 1102 (9th Cir. 2003). Accordingly, this court can apply the  
18 substantive relation-back feature of section 474 "without requiring compliance in this forum  
19 with an implementing state procedural mechanism . . ." *Rumberg*, 424 F.Supp. at 298 (rejecting  
20 the argument that action should be dismissed as time-barred because plaintiff failed to comply  
21 with section 474 when she did not name any Doe defendants in the original complaint); *Lindley*,  
22 780 F.2d at 801-02 (same when the plaintiff simply named a new defendant outright rather than  
23 substituting it for a Doe defendant).

24 In this forum, specificity of pleading is governed by Federal Rules of Civil Procedure 8  
25 and 9. Failure to state a claim, the legal basis for the pending motion, is governed by Rule  
26 12(b)(6). Accordingly, the specificity with which Plaintiff must allege ignorance of Doe  
27 defendants' names is governed by federal law. *Cf. Vess*, 317 F.3d at 1103 (Federal Rule 9(b)'s  
28 particularity of pleading requirement applies to state-law fraud-based causes of action). In


1 reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the truth of all factual  
2 allegations in the complaint and must construe them in the light most favorable to the  
3 nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996).  
4 Although Plaintiff did not expressly allege ignorance of Doe defendants' names, ignorance can  
5 reasonably be inferred from the allegation that he intends to seek leave to amend the complaint  
6 to allege Doe defendants' names "when that information is ascertained." (Compl. at 2.)

7 Furthermore, "[a] motion to dismiss based on the running of the statute of limitations  
8 period may be granted only 'if the assertions of the complaint, read with the required liberality,  
9 would not permit the plaintiff to prove the statute was tolled.'" *Supermail Cargo, Inc. v. United*  
10 *States*, 68 F.3d 1204, 1206-07 (9th Cir. 1995), quoting *Jablon v. Dean Witter & Co.*, 614 F.2d  
11 677, 682 (9th Cir. 1980). The motion must be denied if the factual and legal issues are not  
12 sufficiently clear to permit a determination with certainty whether the action was timely. *See*  
13 *Supermail Cargo*, 68 F.3d at 1207. In this case, the allegations, read with the requisite liberality,  
14 do not preclude a finding that the action was timely filed against Defendant as provided in  
15 section 474. Accordingly, Plaintiff's allegations are sufficient to overcome a Rule 12(b)(6)  
16 challenge.

17 For the foregoing reasons, Defendant Sam Samoa's motion to dismiss is **DENIED**.

18 **IT IS SO ORDERED.**

19  
20 DATED: April 15, 2009

21   
22 M. James Lorenz  
United States District Court Judge

23 COPY TO:

24 HON. LEO S. PAPAS  
UNITED STATES MAGISTRATE JUDGE

25 ALL PARTIES/COUNSEL  
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